

REMARKS

Claims 1 and 3 – 46 are pending in the present Application. Claims 1, 3 – 5, 7, 13, 19 – 22, 24 – 26, 28, 30, 32 – 38, and 40 – 46 have been cancelled, without prejudice, and Claims 6, 8, 9, 11, 14, 15, 23, 27, 29, and 31, have been amended, leaving Claims 6, 8 – 12, 14 – 18, 23, 25 – 27, 29, 31, and 39, for consideration upon entry of the present Amendment. Applicants respectfully request entrance of the present amendments as they reduce the number of claims, and merely place the remaining claims in independent form or to correct their dependency due to the cancellation of other claims. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1, 3-6, 8, 11-12, 14-31, and 36-39 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 6,306,507 to Brunelle et al. or U.S. Patent No. 6,265,522 to Brunelle et al. in view of U.S. Patent No. 4,381,359 to Idel et al. Applicants respectfully traverse this rejection. Firstly, Claims 1, 3 – 5, 19 – 22, 24 – 26, 28, 30, and 36 – 38 have been cancelled without prejudice, thereby rendering the rejection thereof moot.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Claim 6 is directed to a formable thermoplastic multi-layer laminate. The laminate comprises an inner-tie layer comprising a carbonate polymer and an acrylonitrile-styrene graft copolymer. The copolymer comprises an acrylonitrile-styrene-acrylate graft copolymer (ASA) and a styrene acrylonitrile copolymer (SAN). In Claim 11, the inner tielayer comprises a carbonate polymer, an acrylonitrile-styrene graft copolymer, and a stabilizer comprising an alkylthioester. The acrylonitrile-styrene graft copolymer comprises an acrylonitrile-styrene-acrylate graft copolymer (ASA) and/or an acrylonitrile-butadiene-styrene graft copolymer (ABS). In both Claims 29 and 31, the inner tielayer comprises a carbonate polymer and an acrylonitrile-

styrene graft copolymer, wherein the an acrylonitrile-styrene graft copolymer comprises an acrylonitrile-styrene-acrylate graft copolymer (ASA) and/or an acrylonitrile-butadiene-styrene graft copolymer (ABS).

Brunelle '507 is directed to thermally stable polymers. It discusses a polymer comprising resorcinol acrylate polyester chain members in detail, including the specific composition thereof. The focus of Brunelle '507 is on the polymer, making the polymer, and articles comprising the polymer.

Idel et al. are directed to thermoplastic moulding compositions. Idel et al. are relied upon to teach that it is "known in the art to incorporate a combination of acrylonitrile-styrene-acrylate graft copolymer (ASA) and optionally an additional acrylonitrile-styrene copolymer in polycarbonate compositions in order to obtain improved mechanical properties...". Allegedly,

[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize known PC/ASA-based blend compositions in the laminates of the Brunelle references... It would have been obvious to use commercially available stabilizers (claims 11-12) in order to improve the durability and environmental resistance... One of ordinary skill in the art would have selected the melt flow properties of the inner layer (claim 14) in order to optimize.... It would have been obvious to incorporate additional intermediate layers (claim 18) in order to enhance adhesion...

(Final Office Action dated July 12, 2006, hereinafter "FOA 07/06, Pages 6 – 7) However, obviousness is not based upon what an artisan *could do* or what an artisan *may try*, but is based upon what an artisan would be motivated to do with an expectation of success. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, No. 04-1616 (CAFC March 22, 2006) citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); and *In re Rouffett*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998). When the Examiner does not explain the motivation, or the suggestion or teaching, that would have led the skilled artisan at the time of the invention to the claimed combination as a whole, the use of hindsight to conclude that the invention was obvious is inferred. *Id.* Additionally, "[a]lthough the suggestion to combine references may flow from the nature of the problem, '[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art

relevant to obviousness.”” (internal citation omitted) *Id.*, (quoting *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 881 (Fed. Cir. 1998)); *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992).

Idel et al. are directed to moulding compositions, and focus on the stabilization of mixtures of aromatic polycarbonates and ABS plastics. (Col. 1, lines 5 – 10) They focus on the particular components of the composition. They mention that the moulding compositions can be used in injection moulded bodies. (Col. 7, lines 6 – 8) The present application addresses adhesion, surface quality, and appearance. (Paragraphs [0166-0167]) Brunelle ‘507 discusses multilayered articles. There is no motivation in Idel et al. or expectation that moulding compositions of Idel et al. will attain a good adhesion in a multilayer laminate. There is no expectation that “utilizat[ion] of the PC/ASA-based blend compositions in the laminates of the BRUNELLE references …[would] obtain durable, attractive laminates....” (FOA 07/06, page 7). This is merely a conclusory statement based upon the teachings of the present application; i.e., with the hindsight of the present application. No motivation or expectation of success at the time of the present invention has been provided based upon the teachings of the references.

In response, the Examiner contends that the Applicants have not provided evidence to the contrary or evidence of criticality. It is noted that the burden is on the Examiner to establish a *prima facie* case of obviousness. Mere existence of different materials, even those used in various layers is not motivation to combine a layer used in one case, into a multilayer article of another case. No expectation of success exists with the mere exchange of layers due to issues of compatibility, delamination, processability, and so forth. In the absence of motivation and expectation of success, no *prima facie* case of obviousness has been established, and the burden has not shifted to the Applicants.

It is also noted that no motivation is provided for any of the other allegedly obvious claims. For example, no motivation exists to choose a thermoplastic polymer comprising the claimed melt flow properties. A conclusory statement, e.g., “in order to optimize compatibility in melt processing and multilayer film forming operations” (Office Action, page 7), is merely an unsupported statement that is evidence of hindsight, not motivation. Motivation and expectation of success must be provided by the prior art, not the present application. There is no motivation to employ the particularly claimed stabilizers, the particularly claimed melt flow properties, the

particular foam-forming materials, etc. Changes in materials can adversely affect adhesion, surface quality, and so forth. There is no motivation to merely use any material. There is no expectation of success that the result of the use of any material will improve the properties of the layer or laminate, or that the material will allow the formation of a viable multilayer laminate. No *prima facie* case of obviousness has been established.

Regarding the method of forming, it can affect the materials since some materials do not enable the forming method, e.g., some materials can not be thermoformed or vacuum formed with other materials. The method affects the layers and combination of layers, and hence the product formed. Therefore, it does add patentability.

Reconsideration and withdrawal of this rejection are respectfully requested.

Obviousness Double Patenting

Claims 1, 3-6, 8-12, 14-16, 22-29, and 36-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over: (a) Claims 1-47 of copending Application No. 10/210,746 (U.S. Publication No. 2003/0175488); or (b) Claims 1-39 of copending Application No. 10/894,952 (U.S. Publication No. 2006/0019099); in view of U.S. Patent No. 4,381,359 to Idel et al. Claims 1, 3-6, 8-12, 14-16, 19, and 22-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-37 of copending Application No. 10/895,522 (U.S. Publication No. 2006/0017193), in view of U.S. Patent No. 4,381,359 to Idel et al.

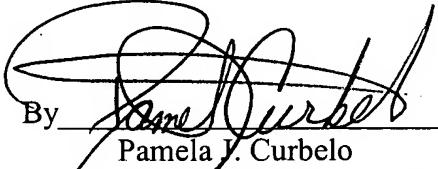
Since neither the present claims nor the claims of any of the copending Applications (10/210,746, 10/894,952, or 10/895,522), have been patented, there is no way that double patenting can be determined (nothing is patented and there is no way to compare the final claims until one of the cases has been patented and the other claims are otherwise allowable). As a result, currently, there is no “double patenting” or even patenting. Hence, the Applicants respectfully request that the Examiner withdraw these obviousness double patenting rejections until the claims are in final form and otherwise in condition for allowance, and the case over which double patenting is alleged is allowed. Until such time, there is no double patenting and no way to determine double patenting.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the objection(s) and rejection(s) and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 50-3621.

Respectfully submitted,

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